no endorsement "customary" on the title — that the land is or has become "ancestral" — the land can, in the Malay conception be nothing else but "acquired property.

If the Collector's order stands the property in question is something different to what it was when the enquiry under section 4 of Cap. 215 was held for the Collector's order transmitting the land to the person entitled under the adat changes the land from being acquired property to ancestral property. It would now be competent to endorse the title "Customary Land".

That was what I suggested in the concluding words of the judgment in *Sali binti Haji Salleh v. Achek bin Enot*[1] which are: "The matter now being in the hands of the Collector he is entitled under section 4 (1) of Cap. 215 to endorse the title 'Customary' ". There is nothing in the judgment in Civil Appeal No. 3/1940 which was delivered earlier to conflict with this judgment. There was merely an order to re-hear in that case and the reference to section 4 is unnecessary to the decision.

The Customary Tenure Enactment (Cap. 215), as Cussen J. points out in *In re Haji Mansur*[3], partially replaces the unwritten customary law. It is the duty of the Collector to give effect to that Enactment. That is the reason of the above concluding words. One of the objects of Cap. 215 is to prevent property in land going out of and away from the custom. Consequently I consider that where the Collector has made a decision such as the present which under that adat converts acquired property into ancestral property he is bound to hold the enquiry under section 4 and endorse the Entry in and Extract from the Mukim Register "Customary Land". A contrary view would result in persons using the adat when it suits them to establish claims by succession and then remain free of that part of the custom which is embodied in the Enactment: a result which can never have been intended.

The appeal is dismissed with costs and the Collector's order will stand.

Appeal Dismissed.

ICHAH BINTI BADOR v. COLLECTOR OF LAND REVENUE, KUALA PILAH.

[App. Civil Jurisdiction (Horne, J.) August 8, 1941]

Land Code Ss. 44 and 106 — Partition of Land — Refusal of Collector of Land Revenue to arrange partition or sale.

In this case co-owners applied to the Collector of Land Revenue, Kuala Pilah, for partition of the land, and in effect the Collector refused to proceed under Section 106 of the Land Code.

Held, the Collector of Land Revenue has no authority or jurisdiction to take into consideration unregistered interests and that he has no power to refuse an application altogether.

C. M. Pillai for the appellant.

M. C. Hay for the respondent.

Horne, J.—In this case the appellant and her sister were the registered owners in undivided shares of a piece of land in the Mukim Register which I understand is not endorsed Customary Land. The co-owners applied to the Collector of Land Revenue, Kuala Pilah, on 3rd July, 1940, submitting a sketch plan of the proposed and agreed subdivision, and in effect the Collector refused to proceed under section 106.

By section 44 of the Land Code any co-proprietor may claim to have a partition of the land if the land be not subject to a charge or lease; and by subsection (iii) of section 44 jurisdiction in respect of partition of land in the Mukim Register is given to the Collector. Section 106 provides that the Collector may, after such enquiry as he may deem necessary, cause the land to be divided into as many parts as there may appear shares in the Mukim Register, or may direct a sale. Consequently there is no power to refuse an application altogether. The Collector has to arrange the partition or order a sale. He has no authority or jurisdiction to take into consideration unregistered interests and to refuse to act. If the circumstances justify him so doing, he might adjourn the matter, but he ought not to take into account unregistered claims or claims which are incapable of registration. Partition is clearly a matter between registered proprietors; and the words "after such enquiry as he may deem necessary" do not empower the Collector to take into account unregistered interests because he can only partition the land into as many parts as there may appear shares in the register.

I therefore order that the Collector do proceed with the application of the appellant dated 3rd July, 1940, in accordance with section 106 of the Land Code.

Order accordingly.